

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 21, 2001

IN RE:)	
)	
TARIFF FILING BY BELL SOUTH)	DOCKET NO.
TELECOMMUNICATIONS, INC. TO)	00-00041
REDUCE GROUPING RATES IN RATE)	
GROUP 5 AND IMPLEMENT A 3)	
PERCENT LATE PAYMENT CHARGE)	

ORDER ON RECONSIDERATION AND OUTSTANDING MOTIONS

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference held on September 26, 2000 for consideration of the September 8 and 3, 2000 filings of the Consumer Advocate Division of the Office of the Attorney General and Reporter ("Consumer Advocate") and BellSouth Telecommunications, Inc. ("BellSouth"); a decision on reconsideration, including consideration of Prime Issues One and Two; and further consideration of the *Second Petition for Stay of Effectiveness*.

I. Background

On January 21, 2000, BellSouth filed a Tariff to impose a three percent (3%) late charge on customers' unpaid balances and to reduce the hunting and grouping rates in rate group 5.¹ The Tariff contained an effective date of February 22, 2000. On February 14, 2000, the Consumer Advocate filed a *Complaint, or Alternatively, Petition to Intervene and Petition for Stay*. BellSouth responded to the Complaint on March 3, 2000.

¹ Rate Group 5 consists of the Memphis and Nashville metropolitan areas.

The Authority first considered this matter at a regularly scheduled Authority Conference on February 15, 2000. During the Conference, the Authority appointed a Pre-Hearing Officer to prepare the case for a hearing on the merits. In addition, the Authority suspended the Tariff for sixty (60) days.

The Pre-Hearing Officer held a pre-hearing conference on March 15, 2000. During the conference, the parties discussed the issues involved in the case and agreed on a procedural schedule. In addition, the Pre-Hearing Officer limited discovery requests to forty-five (45) per party. On March 22, 2000, BellSouth and the Consumer Advocate jointly submitted the following two Prime Issues as the issues in the case:

1. Does the late payment charge proposed in BellSouth's Tariff 00-00041 constitute an impermissible rate increase for basic local exchange service under Tenn. Code Ann. § 65-5-209?
2. When BellSouth bills for services on behalf of other telecommunications companies does it have a right, independent of its agreement with the telecommunications companies for which it bills, to charge its proposed late payment charge to the consumer, in the event a consumer pays the bill late?

The Pre-Hearing Officer memorialized the above findings and agreements in the *Report and Recommendation of Pre-Hearing Officer* filed on April 7, 2000. The Authority approved the Pre-Hearing Officer's report during the April 11, 2000 Authority Conference.

On April 13, 2000, the Consumer Advocate filed a *Motion to Compel, to Issue Subpoenas, Take Depositions, to Effect Discovery and to Audit, or a Motion in Limine*. BellSouth filed a *Motion to Compel* on April 18, 2000. Thereafter, the parties filed numerous documents related to the discovery disputes. The Pre-Hearing Officer, as a result of the numerous filings, scheduled a pre-hearing conference for May 16, 2000.

On May 26, 2000, the Pre-Hearing Officer issued a *Second Report and Recommendation of the Pre-Hearing Officer* as a result of the May 16th pre-hearing conference. The Pre-Hearing Officer determined that there were legal issues that should be resolved before proceeding with discovery. The Pre-Hearing Officer reasoned that the resolution of the legal issues would limit the factual issues such that some of the disputed discovery requests would no longer be necessary and could possibly resolve the Prime Issue(s). Given this reasoning, the Pre-Hearing Officer requested the parties brief the legal issues relative to the two Prime Issues.

The Consumer Advocate filed its brief on May 30, 2000 and filed an *Objection to the [Second] Report and Recommendation of Hearing Officer* (“Objection”) on May 31, 2000. In its Objection, the Consumer Advocate contended that discovery was necessary before briefs could be filed. BellSouth filed its response to the Objection on June 2, 2000 and its brief on June 5, 2000. The Consumer Advocate filed a response to BellSouth’s brief on June 6, 2000.

The Authority next considered this matter at a regularly scheduled Authority Conference on June 6, 2000. During the Conference, the Authority heard from the parties, allowed the Consumer Advocate to file a reply to BellSouth’s response, and asked the Pre-Hearing Officer to issue an initial order addressing the Consumer Advocate’s Objection. The Pre-Hearing Officer issued an *Initial Order Relative to Objection to Second Report and Recommendation* (“Initial Order”) on July 3, 2000.

In the Initial Order, the Pre-Hearing Officer determined that certain issues underlying the two Prime Issues were matters of statutory interpretation and, thereby, questions of law. Specifically, the Pre-Hearing Officer found that BellSouth’s late

payment tariff constituted both a telecommunications service and a charge for such service. The Pre-Hearing Officer, continuing this line of reasoning, determined that whenever the charge applied to basic telecommunications services, it would be an unlawful rate increase. Although the Pre-Hearing Officer did not explicitly grant or deny the tariff, the only conclusion which could flow from this determination was that the Tariff should be denied. Because of this result, the Pre-Hearing Officer did not address Prime Issue Two in the Initial Order.

The Authority considered the Initial Order during the July 11, 2000 Authority Conference. At that time, the Authority heard the parties' arguments and comments from the Pre-Hearing Officer. Thereafter, the Directors deliberated and a majority² concluded that, as to the Prime Issue One, the late payment charge provided for in the Tariff was a non-basic telecommunications service and any such charge would be acceptable provided that it was revenue neutral pursuant to BellSouth's price cap plan. The majority then resolved Prime Issue Two by concluding that BellSouth is not prohibited from charging the late payment charge to customers when it bills customers on behalf of other telecommunications service providers. After reaching these conclusions, the majority voted to approve the tariff.³

On July 26, 2000, the Consumer Advocate filed a *Petition for Stay of Effectiveness* of the July 11th oral decision. Thereafter, the Authority entered its written order approving the Tariff on August 3, 2000. The Consumer Advocate then filed a *Second Petition for Stay of Effectiveness and Petition for Reconsideration* of the written order on August 10,

² Director Malone did not vote with the majority and filed his dissent on August 29, 2000.

³ The actions of the Authority are reflected in its *Order Reversing Initial Order and Approving Tariff* issued August 3, 2000.

2000.⁴ BellSouth responded to the Consumer Advocate's first petition on August 14, 2000. The Consumer Advocate filed its *Reply to BellSouth's Response to Tennessee Consumers' Second Petition for Stay of Effectiveness and Petition for Reconsideration* on August 21, 2000.⁵ BellSouth filed its *Response to Consumer Advocate Division's Second Petition for Stay of Effectiveness and Petition for Reconsideration* on August 22, 2000, and the Consumer Advocate filed its reply on August 23, 2000.

On August 24, 2000, in response to the Consumer Advocate's discovery requests dated March 22, 2000, BellSouth produced contracts between BellSouth and third-parties. On August 25, 2000, the Consumer Advocate filed a *Motion to Modify Protective Order or Change the Classification of Documents Marked Confidential*. BellSouth filed its response on August 28, 2000. Touch 1 Communications, Inc., Billing Concepts, Inc., OAN Services, Inc., Sprint Communications Company L.P., and AT&T Communications of the South Central States, Inc., all of which have entered into contracts with BellSouth for the provision of billing services, filed objections to the Consumer Advocate's motion.

The Authority considered the Consumer Advocate's *Second Petition for Stay of Effectiveness and Petition for Reconsideration* at a regularly scheduled Authority Conference on August 29, 2000. The Directors unanimously granted the reconsideration petition, but decided to deliberate the merits at a later date. Also, a majority⁶ of the Directors voted to hold the second petition for stay in abeyance until September 26, 2000.

⁴ The Consumer Advocate's *Petition for Stay of Effectiveness* of the oral decision was not acted on due to the issuance of the August 3, 2000 Order and the Consumer Advocate's second filing.

⁵ The Consumer Advocate's reply was premature or misdirected in that BellSouth had not yet responded to the Consumer Advocate's *Second Petition for Stay of Effectiveness and Petition for Reconsideration*.

⁶ Director Malone did not vote with the majority.

On September 1, 2000, the Authority sent a notice requesting the parties file a list of facts relevant to the two Prime Issues. The relevant portion of the notice stated:

As a result of [the August 29, 2000] holdings and to assist the Authority in reviewing its Order of August 3, 2000, the Authority directs each party to file a list of each and every fact the party deems to be relevant to the two issues being reconsidered in this matter. The party shall identify the issue to which each fact pertains. The purpose of this request is to determine which facts are undisputed and to determine whether factual questions must be resolved before the Authority may resolve the legal issues presented by the two issues agreed to by the parties. Each party shall file its list of facts no later than 2:00 p.m. on Friday, September 8, 2000.

On September 8, 2000, BellSouth filed its list of facts. The Consumer Advocate elected not to file a list of facts at that time and, instead, filed an *Objection to September 1, 2000 Notice of Filing of Executive Secretary and to the Appearance of Violations of the Public Meetings Act*. In this filing, the Consumer Advocate argued that the notice “appears to originate from a meeting which was not held in accordance with the Public Meetings Act.”⁷ In addition, the Consumer Advocate took issue with the Authority’s decision to grant the motion for reconsideration and to address the merits at a later date. The Consumer Advocate stated: “That if the agency granted the Petition for Reconsideration it granted the Petition for Reconsideration on its merits.”⁸

The Consumer Advocate filed two documents on September 13, 2000. First, the Consumer Advocate filed a *Motion to Amend Tennessee Consumers’ Petition to Intervene*. Second, the Consumer Advocate filed a *Response to BellSouth’s Implied Motion for Summary Judgment*.⁹ In its response, the Consumer Advocate requested permission to file

⁷ *Objection to September 1, 2000 Notice of Filing of Executive Secretary and to the Appearance of Violations of the Public Meetings Act*, p.1 (September 8, 2000).

⁸ *Id.*

⁹ The Consumer Advocate construed BellSouth’s list of facts and attached memorandum as a motion for summary judgment.

an affidavit to address the September 1, 2000 Notice and attached an affidavit of R. Terry Buckner. Finally, the Consumer Advocate stated that it may file a separate brief to address BellSouth's legal arguments, but, as explained by the Consumer Advocate, the Consumer Advocate was unable to file the brief along with the affidavit because counsel had to be out of state on other matters. On September 19, 2000, BellSouth filed a *Response of BellSouth Telecommunications, Inc. to Consumer Advocate Divisions' Recent Filings*.

On September 15, 2000, the Authority published the *Conference Agenda* for the September 26, 2000 Authority Conference. The Agenda contained a listing for Docket No. 00-00041. On September 20, 2000, the Consumer Advocate filed a *Motion for Extension of Time to Argue Before the TRA*. The Consumer Advocate requested that the Authority continue this matter until the next Authority Conference, because, as a result of jury duty, attorney Vincent Williams would not be available to argue his position on September 26, 2000. The motion also stated that the Consumer Advocate intended to brief any outstanding issues. BellSouth filed a response to the motion on September 20, 2000. BellSouth objected to the need for argument during the September 26, 2000 Authority Conference and a brief from the Consumer Advocate. On September 25, 2000, the Consumer Advocate filed *Tennessee Consumers' Brief in Opposition to BellSouth's Motions to Strike, for Summary Judgment, to BellSouth's Alternative Requests, to BellSouth's Request to Deny Argument and BellSouth's Other Objections*.

In summary, as of the September 26, 2000 Authority Conference, the following items were outstanding: 1) *Motion for Extension of Time to Argue Before the TRA*; 2) decision on reconsideration; 3) *Second Petition for Stay of Effectiveness*; 4) *Objection to September 1, 2000 Notice of Filing of Executive Secretary and to the Appearance of*

Violations of the Public Meetings Act; 5) Motion to Amend Tennessee Consumers' Petition to Intervene; and 6) Motion to Modify Protective Order or Change the Classification of Documents Marked Confidential. This Order addresses each of these items.

II. *Motion for Extension of Time to Argue Before the TRA*

There are numerous filings before the Directors explaining each party's position on the issues. In addition, the parties had an opportunity to make arguments at the August 29, 2000 Authority Conference. There is no need for oral argument or any input from the parties regarding the matters before the Directors. Therefore, the Authority unanimously voted to deny the *Motion for Extension of Time to Argue Before the TRA*.

III. *Decision on Reconsideration*

In reconsidering the August 3, 2000 Order, the Authority held that there were three conclusions subject to reconsideration. Specifically, the Authority must reconsider its decisions as to Prime Issue One, Prime Issue Two, and approval of the Tariff. Related to the approval of the Tariff is the question of whether further fact finding is necessary to determine whether the Tariff complies with § 65-5-209(e). For the reasons set forth below, a majority¹⁰ of the Authority upheld the August 3rd decision as to Prime Issue One, and the Directors unanimously agreed to vacate the August 3rd decision as to Prime Issue Two and the approval of the Tariff.

A. *Prime Issue One*

In order to resolve Prime Issue One, the decision-maker must answer at least three questions. These are: 1) what is the underlying service offered by the tariff; 2) is the service offered by the tariff a telecommunications service; and 3) assuming the answer to

¹⁰ Director Malone did not vote with the majority as to Prime Issue One.

question 2 is yes, is the telecommunications service a basic or non-basic service. To answer these questions, the Authority relies on the findings of fact used by the Pre-Hearing Officer in the July 3, 2000 *Initial Order Relative to Objection to Second Report and Recommendation*, because the Consumer Advocate admitted during the August 29, 2000 Authority Conference that there was substantial and material evidence to support the Pre-Hearing Officer's ruling.¹¹ In addition, the Authority relies on the parties' filings and oral arguments.

1. What is the underlying service offered by the tariff?

In order to determine whether the service is a telecommunication service or a basic or non-basic service, the decision-maker must define the service. In the *Initial Order Relative to Objection to Second Report and Recommendation*, the Pre-Hearing Officer defined the telecommunication service as giving a customer the benefit of the "float." The Pre-Hearing Officer next defined the term "float" as the value of paying after the next billing date and before service is disconnected.¹² While in the past BellSouth has not explicitly charged its customers for taking advantage of the "float," under the proposed tariff, BellSouth would charge customers three percent (3%) per month of the unpaid bill amount for this service.¹³

A majority of the Directors adopt this finding of fact as undisputed. The Consumer Advocate has not objected to this finding and, in general, supports the Pre-Hearing

¹¹ *Transcript of Authority Conference*, p. 30 (August 29, 2000).

¹² *Initial Order Relative to Objection to Second Report and Recommendation*, p. 9 (July 3, 2000); see also the Pre-Hearing Officer's clarification of his order (read into the record and distributed during the July 11, 2000 Authority Conference.)

¹³ The Consumer Advocate argues that BellSouth already recovers the costs associated with processing late-payments, because these costs were incorporated into the rate for basic service under the rate of return ratemaking procedure approved as reasonable on June 6, 1995 by the Tennessee Public Service Commission.

Officer's findings of fact contained in the *Initial Order Relative to Objection to Second Report and Recommendation*. BellSouth has not objected to the Authority's prior adoption of the Pre-Hearing Officer's finding that the service underlying the late payment charge constituted a "float." Moreover, there is sufficient evidence, i.e., the language of the tariff itself, to make this determination.

2. Is the Service Offered by the Tariff a Telecommunications Service?

The Consumer Advocate and BellSouth agree with the Pre-Hearing Officer's finding that the service offered by the Tariff is a telecommunications service.¹⁴ Moreover, the proposed late payment charge is clearly a charge for billing and collection services which are essential to the provision of telecommunications. Classifying billing and collection as a telecommunications service is consistent with Docket 99-00596 where the Authority found that "[b]ecause the billing and collection function provided for N11 is clearly a tariffed retail service available to subscribers through BellSouth's General Subscribers Services Tariff, according to BellSouth's statement above, billing and collection should be a service available for resale."¹⁵ This is consistent with the findings of the FCC as well. As pointed out by the Authority in Docket 99-00596, "the FCC

¹⁴ *Transcript of Authority Conference*, p.27, 1.3-7; p.35, 1.16-17 (August 29, 2000); *see also BellSouth Telecommunications Inc.'s List of Facts Relevant to the Two Issues Being Considered in This Matter and Memorandum in Support of the List*, p.9-10 (September 8, 2000).

Director Malone, however, is of the opinion that such an "agreement" is not found in the record. Prior to the majority's July 11, 2000, decisions, the parties did not agree on the issue of whether the proposed late payment charge constituted a telecommunications service. BellSouth contended vehemently that the late payment charge did not constitute a telecommunications service, while the Attorney General's Office argued otherwise. *See, e.g., Brief of BellSouth Telecommunications, Inc. Addressing the Issues Presented in this Docket*, TRA Docket No. 00-00041, pp. 2-3 (may 30, 2000). *See also TRA Conference Transcript*, p. 127 (July 11, 2000) ("It's not a telecommunications service at all.") (Counsel for BellSouth). The majority purports to cite authority for the above-stated determination. None of the citations proffered by the majority support, even marginally, the existence of such an agreement on the part of BellSouth. Hence, it is Director Malone's opinion that the majority's characterization of BellSouth's position, and its reliance upon such characterization, is, by any standard, in error.

¹⁵ *BellSouth Telecommunications, Inc. Tariff to Add Language to the N11 Tariff*, Docket 99-00596, p.3 (September 5, 2000) (Order Denying Tariff).

commented that a LEC provides telecommunications service in several ways including billing and collection.”¹⁶

3. Is the Telecommunications Service a Basic or Non-Basic Service?

As noted by the Pre-Hearing Officer, the application of statutes and regulations to a particular set of undisputed facts is a question of law that may be decided on the parties’ arguments.¹⁷ If the facts are disputed, the decision-maker must resolve the factual disputes before applying the statute or regulation. As previously discussed, the parties agree that the underlying service is the “float” and that the service is a telecommunication service. Because these facts are undisputed, the Authority may move to the consideration of the legal issue of whether this service is basic or non-basic under state law.

Tenn. Code Ann. § 65-5-208 provides classifications of telecommunication services. The pricing of telecommunication services depends on the classification of the service. The statute defines the classifications as follows:

(a) Services of incumbent local exchange telephone companies who apply for price regulation under § 65-5-209 are classified as follows:

(1) “Basic local exchange telephone services” are telecommunications services which are comprised of an access line, dial tone, touch-tone and usage provided to the premises for the provision of two-way switched voice or data transmission over voice grade facilities of residential customers or business customers within a local calling area, Lifeline, Link-Up Tennessee, 911 Emergency Services and educational discounts existing on June 6, 1995, or other services required by state or federal statute. These services shall, at a minimum, be provided at the same level of quality as is being provided on June 6, 1995. Rates for these services shall include both recurring and nonrecurring charges.

(2) “Non-basic services” are telecommunications services which are not defined as basic local exchange telephone services and are not exempted under subsection (b). Rates for these services shall include both recurring and nonrecurring charges.

¹⁶ *Id.* at 2 (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, 11 FCC Rcd. 15499, ¶¶ 259-264, 865-877 (August 8, 1996) (First Report and Order)).

¹⁷ *See Dempsey v. Correct Mfg. Corp.*, 755 S.W.2d 798, 806 (Tenn. App. 1998).

In his Initial Order, the Pre-Hearing Officer determined that, as a matter of law, the proposed late payment charge is part basic service and part non-basic service, depending on the underlying services to which it is applied. The Pre-Hearing Officer further determined that to the extent the charge was applied to basic services the late payment charge would constitute an impermissible rate increase in basic services. Alternatively, one could reasonably conclude that, as a matter of law, the late payment charge is wholly non-basic because the service is not included in the statutory definition of basic services.

The service underlying this charge is not explicitly included or otherwise provided for in the narrow definition of basic local exchange telephone service contained in Tenn. Code Ann. § 65-5-208(a)(1). Under the terms of BellSouth's tariffs, any late payment charge is separate and distinct from the rates charged for an access line, dial tone, touch-tone, and usage. Moreover, the service and charge is optional or discretionary at the choice of the customer and by paying on time may be avoided entirely. The obvious policy intent of creating a class of basic services, and then constraining future price increases in such services, is to ensure that essential communications services will continue to be made available to citizens at affordable rates after a carrier has entered into a price regulation plan. As long as the customer pays the bill on time, the customer will be charged no more for basic services than the affordable rates existing when BellSouth entered its price regulation plan. Therefore, because the service offered by the Tariff is a telecommunications service, but is not a basic service and has not been exempted under Term. Code Ann. § 65-5-208(b), the late payment charge is a non-basic service.

B. Prime Issue Two

With respect to Prime Issue Two, additional facts must be ascertained through discovery before the Directors can determine whether BellSouth's proposal to apply late

charges to third-party billings is legal under Tennessee law. The legality of applying the late payment charge could very well hinge on the billing arrangement negotiated between the third-party and its customer.

After the Authority entered its Order approving the Tariff, but before the Authority acted on the Consumer Advocate's Petition for Reconsideration, BellSouth produced two boxes of contracts to the Consumer Advocate in response to a discovery request. Prudence dictates that the Consumer Advocate be given an opportunity to develop discovery with respect to these documents.

C. Approval of the Tariff

A majority¹⁸ of the Directors approved the Tariff in its entirety during the July 11, 2000 Authority Conference. During the September 26, 2000 Authority Conference, the Authority unanimously found that, in retrospect, approval of the Tariff was premature because Prime Issue Two has not been fully resolved and further investigation into whether the charge complies with § 65-5-209(e) is necessary.

IV. *Second Petition for Stay of Effectiveness*

On August 29, 2000, a majority¹⁹ of the Directors voted to hold the *Second Petition for Stay of Effectiveness* in abeyance based on BellSouth's assertion that the Tariff would not go into effect until October 1, 2000. Given the decision to vacate the Authority's Order approving the Tariff, the *Second Petition for Stay of Effectiveness* is moot.

V. *Objection to September 1, 2000 Notice of Filing of Executive Secretary and to the Appearance of Violations of the Public Meetings Act*

In his filing, the Consumer Advocate requests that the Authority hear his objections

¹⁸ Director Malone did not vote with the majority and filed his dissent on August 29, 2000.

¹⁹ Director Malone did not vote with the majority.

and remand the matter for complete discovery and to hear the remaining issues.²⁰ In making this request, the Consumer Advocate makes two incorrect assertions. First, the Consumer Advocate incorrectly contends that the Authority granted the petition for reconsideration on the merits at the Authority Conference. The Consumer Advocate fails to acknowledge that a petition for reconsideration may be disposed of by using a two-step process as recognized in Tenn. Code Ann. § 4-5-317. Indeed, by using the two-step process, the Authority's action was consistent with new Rule of Practice and Procedure 1220-1-2-.20, which went into effect on September 13, 2000.

Second, the Consumer Advocate asserts that the Authority violated the Public Meetings Act, Tenn. Code Ann. §§ 8-44-101 through 8-44-108, when it issued the September 1, 2000 Notice. Specifically, the Consumer Advocate contends that the Notice originated from a non-public meeting. This assertion is also without merit. The notice was sent as a follow-up to a direct question from Director Greer as to whether the Consumer Advocate could list factual issues related to Prime Issue One. As the dialogue continued, the Consumer Advocate stated that he did not have a list at that time and also discussed factual issues related to Prime Issue Two.²¹ Because the question regarding a list of facts was raised during the Authority Conference, any assertion that a Notice requesting a list of facts resulted from a secret meeting is baseless. The request was clearly made in public. Further, notices such as the one to which the Consumer Advocate objects are routinely served on parties to a contested case, as are data requests and notices of hearings. Having found that the Consumer Advocate's assertions were without merit, the Authority

²⁰ *Objection to September 1, 2000 Notice of Filing of Executive Secretary and to the Appearance of Violations of the Public Meetings Act*, p.2 & 5.

²¹ *Transcript of Authority Conference*, p.52-53 (August 29, 2000).

unanimously voted to overrule the Consumer Advocate's *Objection to September 1, 2000 Notice of Filing of Executive Secretary and to the Appearance of Violations of the Public Meetings Act*.²²

VI. Motion to Amend Tennessee Consumers' Petition to Intervene

In its *Motion to Amend Tennessee Consumers' Petition to Intervene*, the Consumer Advocate referenced the late payment charge contained in BellSouth's Private Line Services Tariff ("PLST") at §B2.4.1.E. The Consumer Advocate's motion is vague and can be interpreted in two ways. First, the motion could be read as a request for intervention into that part of Docket No. 00-00041 that increases the late payment charge from one point five percent (1.5%) to three percent (3%). Second, the motion could be read as a request for intervention into the application of any late payment charge for PLST services.²³

To the extent that the Consumer Advocate desires to challenge the increase in the PLST late payment charge, it may already do so without the need for amending its original

²² At the September 26, 2000 Authority Conference, Director Greer stated that he considered the allegations raised in the Consumer Advocate's *Objection to September 1, 2000 Notice of Filing of Executive Secretary and to the Appearance of Violation of the Public Meetings Act* to be as serious as they were unsubstantiated and admonished counsel for the Consumer Advocate that he should avoid raising frivolous charges. Director Greer further stated that the *Tennessee Consumers' Brief in Opposition to BellSouth's Motions to Strike, for Summary Judgement, to BellSouth's Alternative Requests, to BellSouth's Request to Deny Argument and BellSouth's Other Objections* filed by the Consumer Advocate on September 25, 2000, falsely asserted that counsel for the Consumer Advocate was rebuffed at the August 29, 2000 Authority Conference after asking the Authority to clarify its oral decision regarding the Authority's handling of the Consumer Advocate's petition for reconsideration. Contrary to the Consumer Advocate's assertion, counsel for the Consumer Advocate sought and received answers to his questions from Director Greer at the heel of the conference. See *Transcript of Authority Conference*, pp. 77-78 (August 29, 2000).

²³ The Tariff before the Authority for approval accomplishes two goals. First, it creates a three percent (3%) late payment charge in BellSouth's General Subscribers Services Tariff ("GSST"). BellSouth's GSST offers a wide array of voice and data services to both residential and business customers of every size. Second, the Tariff increases the rate of an existing one point five percent (1.5%) late payment charge, contained in the PLST and approved in TPSC Docket No.89-02829, to three percent (3%). BellSouth's PLST generally offers dedicated telecommunications services such as SynchroNet, MegaLink, and LightGate to large and medium-sized business customers. The Authority's files indicate that the late payment charge approved in TPSC Docket No.89-02829 has been effective since July 2, 1990.

petition to intervene. The increase in the PLST late payment charge is part of Docket No. 00-00041, and the Consumer Advocate's intervention in this docket has already been granted. On the other hand, if the Consumer Advocate desires to challenge the validity of any late payment charge in the PLST, its motion is procedurally incorrect. The PLST late payment charge has been in effect for over ten years, and the Tennessee Public Service Commission docket that approved this charge has long been closed. It is not appropriate to challenge the validity of an existing tariff that is currently in effect through a petition to intervene in another tariff. If the Consumer Advocate's involvement in Docket No. 00-00041 has raised questions as to the validity of the PLST late payment charge, it should consider other procedures for review.

Based on the foregoing, the Authority unanimously voted to deny the Consumer Advocate's *Motion to Amend Tennessee Consumers' Petition to Intervene*.

VII. *Motion to Modify Protective Order to Change the Classification of Documents Marked Confidential*

Because this motion was not specifically listed on the Agenda and resolution of this motion does not inhibit discovery or other matters for consideration at this time, the Authority unanimously voted to hold the motion in abeyance.

VIII. Conclusion

In bringing this matter to a conclusion, the Authority recognized that there are two issues remaining in this proceeding. These are Prime Issue Two related to the application of the late-payment charge to third-party telecommunications service providers and the issue of whether the Tariff complies with § 65-5-209(e). To resolve these issues, the Authority adopted a procedural schedule for discovery. Pursuant to this schedule, the parties shall file discovery requests related to the two outstanding issues no later than 2:00

p.m. on Tuesday, October 3, 2000. All responses to discovery shall be filed no later than 2:00 p.m. on Tuesday, October 10, 2000. Any motions related to discovery must be filed no later than 2:00 p.m. on Friday, October 13, 2000 and any responses thereto must be filed no later than 2:00 p.m. on Tuesday, October 17, 2000. In addition, the Directors unanimously voted to remand the case to the Pre-Hearing Officer to resolve any discovery disputes.

IT IS THEREFORE ORDERED THAT:

1. The *Motion for Extension of Time to Argue Before the TRA* filed by the Consumer Advocate Division of the Office of the Attorney General and Reporter on September 20, 2000 is denied.

2. The August 3, 2000 Order is vacated as to the resolution of Prime Issue Two and the approval of the Tariff. That portion of the August 3, 2000 Order resolving Prime Issue One is affirmed as the decision of this Authority for the reasons set forth in the August 3, 2000 Order and herein.

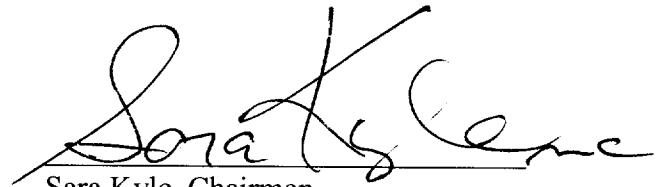
3. The *Second Petition for Stay of Effectiveness* filed by the Consumer Advocate Division of the Office of the Attorney General and Reporter on August 10, 2000 is moot.

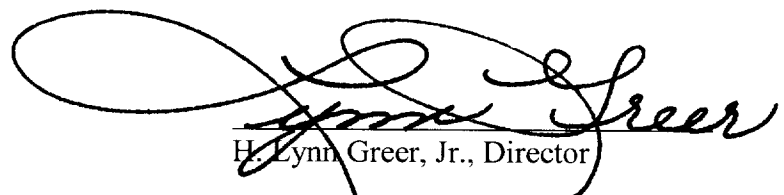
4. The *Objection to September 1, 2000 Notice of Filing of Executive Secretary and to the Appearance of Violations of the Public Meetings Act* filed by the Consumer Advocate Division of the Office of the Attorney General and Reporter on September 8, 2000 is overruled.

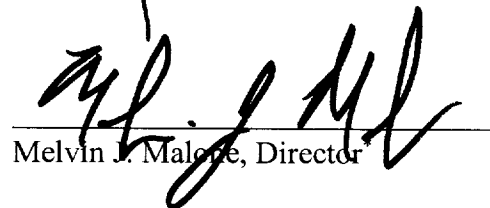
5. The *Motion to Amend Tennessee Consumers' Petition to Intervene* filed by the Consumer Advocate Division of the Office of the Attorney General and Reporter on September 13, 2000 is denied.

6. The *Motion to Modify Protective Order or Change the Classification of Documents Marked Confidential* filed by the Consumer Advocate Division of the Office of the Attorney General and Reporter on August 25, 2000 is held in abeyance.


7. Any party aggrieved by this Order may file a Petition for Reconsideration with the Tennessee Regulatory Authority pursuant to Term. Code Ann. § 4-5-317 within fifteen (15) days of the entry of this Order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

* Director Malone voted with the majority with the exception of the majority's decision to affirm the August 3, 2000, Order as to Issue One. Director Malone has not, to date, commented on the merits of BellSouth's late payment charge tariff in this matter. He has stated that BellSouth's late payment charge tariff may be determined to be consistent with state law, TRA rules and orders, and the public interest. Still, in his opinion, such a conclusion, if reached, must be made consistent with the careful application of basic principles of jurisprudence.